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SENATE BILL 492

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Shannon Robinson

AN ACT

RELATING TO CONTROLLED SUBSTANCES; ENACTING THE COMPASSIONATE
USE MEDICAL MARIJUANA ACT; AMENDING PROVISIONS OF THE
CONTROLLED SUBSTANCES ACT; REPEALING THE CONTROLLED SUBSTANCES
THERAPEUTIC RESEARCH ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 10 of this act may be cited as the "Compassionate Use
Medical Marijuana Act".

Section 2. [NEW MATERIAL] LEGISLATIVE FINDINGS--
PURPOSE. --

A. The legislature finds that:

(1) recent research has shown that the use of
marijuana is a medically valuable treatment for a variety of
medical conditions;

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1 (2) state law should make a distinction
2 between medical and non-medical use of marijuana;

3 (3) practitioners should not be penalized for
4 discussing marijuana as a treatment option for their patients;
5 and

6 (4) seriously ill patients who engage in
7 medical use of marijuana on their treating practitioner's
8 advice should not be arrested and incarcerated for violation of
9 drug laws.

10 B. The purpose of the Compassionate Use Medical
11 Marijuana Act is to allow the beneficial use of marijuana in
12 treating eligible medical conditions and symptoms of eligible
13 medical conditions.

14 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the
15 Compassionate Use Medical Marijuana Act:

16 A. "certified patient" means a person who is
17 qualified to participate in the program and has been certified
18 by the secretary of health for participation in the program;

19 B. "eligible medical condition" means:

20 (1) a chronic or debilitating disease,
21 condition or its treatment that produces one or more of the
22 following:

23 (a) severe pain; or

24 (b) severe muscle spasms, including
25 those characteristic of multiple sclerosis or Crohn's disease;

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1 or

2 (2) a condition that the department designates
3 by rule as an eligible medical condition;

4 C. "department" means the department of health;

5 D. "practitioner" means a physician who is licensed
6 to prescribe and administer drugs that are subject to the
7 Controlled Substances Act;

8 E. "primary caregiver" means a person who has
9 reached his eighteenth birthday and who has agreed to take
10 responsibility for managing the well-being of a certified
11 patient with respect to the medical use of marijuana pursuant
12 to the Compassionate Use Medical Marijuana Act;

13 F. "program" means the medical use of marijuana
14 program established and administered by the department pursuant
15 to the Compassionate Use Medical Marijuana Act; and

16 G. "topical use" means a drug delivery method that
17 does not involve ingesting or inhaling marijuana and includes
18 the application of marijuana by means of a topical patch,
19 lotion, gel, alcohol or bath.

20 Section 4. [NEW MATERIAL] RULEMAKING BY SECRETARY OF
21 HEALTH FOR ESTABLISHING PROGRAM --The secretary of health shall
22 adopt rules establishing a program for the topical use of
23 marijuana to treat qualified patients with eligible medical
24 conditions. The rules shall provide for:

25 A. the establishment of an advisory board that

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1 shall:

2 (1) be composed of a number of members
3 determined by and appointed by the secretary of health;

4 (2) be composed of individuals knowledgeable
5 about the medical use of marijuana;

6 (3) establish requirements and procedures for
7 patients to qualify for participation in the program, including
8 a requirement that a patient must be certified by a
9 practitioner to have an eligible medical condition; and

10 (4) recommend certification of qualified
11 patients to the secretary of health; and

12 B. requirements to be met and a registration system
13 for persons other than certified patients who are involved in
14 the maintenance of the program, such as individuals who
15 dispense, administer and distribute marijuana for use in the
16 program.

17 Section 5. [NEW MATERIAL] STATUTORY REQUIREMENTS FOR
18 PARTICIPATION IN PROGRAM -- A patient may participate in the
19 program if the patient:

20 A. is a resident of the state at the time of
21 application to the program and continues to be a resident
22 during participation in the program;

23 B. suffers from an eligible medical condition; and

24 C. is a certified patient.

25 Section 6. [NEW MATERIAL] LAWFUL ACTIVITIES. --

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1 A. Except as provided in Section 8 of the
2 Compassionate Use Medical Marijuana Act, a certified patient
3 and the patient's primary caregiver are not subject to arrest,
4 prosecution, civil or criminal penalty or denial of any right
5 or privilege for manufacturing or possessing marijuana in a
6 form approved by the department for topical use in the
7 treatment of an eligible medical condition if the amount
8 possessed collectively is not more than is reasonably necessary
9 to ensure the uninterrupted availability for the purpose of
10 alleviating the symptoms or effects of the person's eligible
11 medical condition.

12 B. A person is not subject to arrest, prosecution,
13 civil or criminal penalty or denial of any right or privilege
14 for manufacturing, possessing or administering marijuana or for
15 the certification of a patient's condition for the purpose of
16 qualifying the patient for participation in the program if the
17 person is registered with the department as a participating
18 practitioner in the program.

19 C. A person is not subject to arrest, prosecution,
20 civil or criminal penalty or denial of any right or privilege
21 for manufacturing, possessing, distributing or selling
22 marijuana in a form approved by the department for topical use
23 in the treatment of an eligible medical condition if the person
24 is registered with the department as a participant in the
25 program, the terms of the registration include the specified

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1 activities and all conditions of the registration are met.

2 Section 7. [NEW MATERIAL] PARTICIPATION BY PERSON WHO HAS
3 NOT REACHED HIS EIGHTEENTH BIRTHDAY. -- A person who has not
4 reached his eighteenth birthday may be certified as a patient
5 to participate in the program only if:

6 A. the patient's attending practitioner has
7 explained the potential risks and benefits of the program to
8 the patient and the patient's parents, legal guardian or person
9 having legal custody of the patient; and

10 B. a parent, legal guardian or person having legal
11 custody of the patient consents in writing to:

12 (1) the patient's participation in the
13 program;

14 (2) serve as the patient's primary caregiver;
15 and

16 (3) control the acquisition of the marijuana,
17 the dosage and the frequency of use of the marijuana by the
18 patient.

19 Section 8. [NEW MATERIAL] PROHIBITIONS, RESTRICTIONS AND
20 LIMITATIONS ON THE MEDICAL USE OF MARIJUANA. -- Participation in
21 the program by a certified patient does not relieve the patient
22 from:

23 A. liability for damages or criminal prosecution
24 arising out of the operation of a vehicle while under the
25 influence of marijuana; and

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1 B. criminal prosecution or civil penalty for
2 possession or use of marijuana other than for topical use:

3 (1) in a school bus or public vehicle;

4 (2) on school grounds or property;

5 (3) in the workplace of the patient's
6 employment; or

7 (4) at a public park, beach, recreation
8 center, youth center or other public place where the use or
9 possession of marijuana is prohibited.

10 Section 9. [NEW MATERIAL] FRAUDULENT REPRESENTATION TO A
11 LAW ENFORCEMENT OFFICER PUNISHABLE AS A PETTY MISDEMEANOR. -- A
12 person who makes a fraudulent representation to a law
13 enforcement officer about participation in the program to avoid
14 arrest or prosecution for a marijuana-related offense is guilty
15 of a petty misdemeanor and shall be sentenced in accordance
16 with Section 31-19-1 NMSA 1978.

17 Section 10. [NEW MATERIAL] DEFENSE OF MEDICAL USE OF
18 MARIJUANA IN PROSECUTIONS FOR MARIJUANA OFFENSES. -- A person who
19 suffers from an eligible medical condition or a primary
20 caregiver of that person may assert the medical use of
21 marijuana as a defense to a prosecution for an offense
22 involving marijuana and the defense is presumed valid if the
23 evidence shows that the person and the primary caregiver
24 collectively were in possession of marijuana that is no more
25 than is reasonably necessary to ensure uninterrupted

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1 availability of marijuana for the purpose of alleviating the
2 symptoms or effects of the patient's eligible medical
3 condition.

4 Section 11. Section 30-31-6 NMSA 1978 (being Laws 1972,
5 Chapter 84, Section 6, as amended) is amended to read:

6 "30-31-6. SCHEDULE I.--The following controlled
7 substances are included in Schedule I:

8 A. any of the following opiates, including their
9 isomers, esters, ethers, salts, and salts of isomers, esters
10 and ethers, unless specifically exempted, whenever the
11 existence of these isomers, esters, ethers and salts is
12 possible within the specific chemical designation:

- 13 (1) acetyl methadol;
- 14 (2) allyl prodi ne;
- 15 (3) al phacetyl methadol ;
- 16 (4) al phameprodi ne;
- 17 (5) al phamethadol ;
- 18 (6) benzethi di ne;
- 19 (7) betacetyl methadol ;
- 20 (8) betameprodi ne;
- 21 (9) betamethadol ;
- 22 (10) betaprodi ne;
- 23 (11) cl oni tazene;
- 24 (12) dextromorami de;
- 25 (13) dextrorphan;

- 1 (14) di ampromi de;
- 2 (15) di ethyl thiambutene;
- 3 (16) di menoxadol ;
- 4 (17) di mepheptanol ;
- 5 (18) di methyl thiambutene;
- 6 (19) di oxaphetyl butyrate;
- 7 (20) di pimpanone;
- 8 (21) ethyl methyl thiambutene;
- 9 (22) etonitazene;
- 10 (23) etoxeridine;
- 11 (24) furethidine;
- 12 (25) hydroxypethidine;
- 13 (26) ketobemidone;
- 14 (27) levomoramide;
- 15 (28) levophenacetylmorphan;
- 16 (29) morpheridine;
- 17 (30) noracymethadol ;
- 18 (31) norlevorphanol ;
- 19 (32) normethadone;
- 20 (33) norpimpanone;
- 21 (34) phenadoxone;
- 22 (35) phenampromide;
- 23 (36) phenomorphan;
- 24 (37) phenoperidine;
- 25 (38) piritramide;

- 1 (39) proheptazine;
- 2 (40) properidine;
- 3 (41) racemoramide; and
- 4 (42) trimiperidine;

5 B. any of the following opium derivatives, their
6 salts, isomers and salts of isomers, unless specifically
7 exempted, whenever the existence of these salts, isomers and
8 salts of isomers is possible within the specific chemical
9 designation:

- 10 (1) acetorphine;
- 11 (2) acetyldihydrocodeine;
- 12 (3) benzylmorphine;
- 13 (4) codeine methylbromide;
- 14 (5) codeine-N-oxide;
- 15 (6) cyprenorphine;
- 16 (7) desomorphine;
- 17 (8) dihydromorphine;
- 18 (9) etorphine;
- 19 (10) heroin;
- 20 (11) hydromorphinol;
- 21 (12) methyl desorphine;
- 22 (13) methyl dihydromorphine;
- 23 (14) morphine methylbromide;
- 24 (15) morphine methylsulfonate;
- 25 (16) morphine-N-oxide;

- 1 (17) myrophi ne;
- 2 (18) ni cocodei ne;
- 3 (19) ni comorphi ne;
- 4 (20) normorphi ne;
- 5 (21) phol codi ne; and
- 6 (22) thebacon;

7 C. any material, compound, mixture or preparation
8 which contains any quantity of the following hallucinogenic
9 substances, their salts, isomers and salts of isomers, unless
10 specifically exempted, whenever the existence of these salts,
11 isomers, and salts of isomers is possible within the specific
12 chemical designati on:

- 13 (1) 3, 4- methylenedi oxy amphetami ne;
- 14 (2) 5- methoxy- 3, 4- methylenedi oxy amphetami ne;
- 15 (3) 3, 4, 5- tri methoxy amphetami ne;
- 16 (4) bufoteni ne;
- 17 (5) di ethyl tryptami ne;
- 18 (6) di methyl tryptami ne;
- 19 (7) 4- methyl - 2, 5- di methoxy amphetami ne;
- 20 (8) i bogai ne;
- 21 (9) lysergi c aci d di ethyl ami de;
- 22 (10) mari juana;
- 23 (11) mescal i ne;
- 24 (12) peyote, except as otherwise provided in
25 the Controlled Substances Act;

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- 1 (13) N-ethyl-3-piperidyl benzilate;
- 2 (14) N-methyl-3-piperidyl benzilate;
- 3 (15) psilocybin;
- 4 (16) psilocyn;
- 5 (17) tetrahydrocannabinols; and
- 6 (18) hashish;

7 D. the enumeration of peyote as a controlled
8 substance does not apply to the use of peyote in bona fide
9 religious ceremonies by a bona fide religious organization, and
10 members of the organization so using peyote are exempt from
11 registration. Any person who manufactures peyote for or
12 distributes peyote to the organization or its members shall
13 comply with the federal Comprehensive Drug Abuse Prevention and
14 Control Act of 1970 and all other requirements of law; and

15 E. the enumeration of marijuana,
16 tetrahydrocannabinols or chemical derivatives of
17 tetrahydrocannabinol as Schedule I controlled substances does
18 not apply to the use of marijuana, tetrahydrocannabinols or
19 chemical derivatives of tetrahydrocannabinol by certified
20 patients pursuant to the [~~Controlled Substances Therapeutic~~
21 ~~Research Act~~] Compassionate Use Medical Marijuana Act."

22 Section 12. Section 30-31-7 NMSA 1978 (being Laws 1972,
23 Chapter 84, Section 7, as amended) is amended to read:

24 "30-31-7. SCHEDULE II.--

25 A. The following controlled substances are included

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1 in Schedule II:

2 (1) any of the following substances, except
3 those narcotic drugs listed in other schedules, whether
4 produced directly or indirectly by extraction from substances
5 of vegetable origin, or independently by means of chemical
6 synthesis, or by combination of extraction and chemical
7 synthesis:

8 (a) opium and opiate, and any salt,
9 compound, derivative or preparation of opium or opiate;

10 (b) any salt, compound, isomer,
11 derivative or preparation thereof which is chemically
12 equivalent or identical with any of the substances referred to
13 in Subparagraph (a) of this paragraph, but not including the
14 isoquinoline alkaloids of opium;

15 (c) opium poppy and poppy straw;

16 (d) coca leaves and any salt, compound,
17 derivative or preparation of coca leaves, and any salt,
18 compound, derivative or preparation thereof which is chemically
19 equivalent or identical with any of these substances, but not
20 including decocainized coca leaves or extractions which do not
21 contain cocaine or ecgonine;

22 (e) marijuana, but only for the use by
23 certified patients pursuant to the [~~Controlled Substances~~
24 ~~Therapeutic Research Act~~] Compassionate Use Medical Marijuana
25 Act; and

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1 (f) tetrahydrocannabinols or chemical
2 derivatives of tetrahydrocannabinol, but only for the use of
3 certified patients pursuant to the [~~Controlled Substances~~
4 ~~Therapeutic Research Act~~] Compassionate Use Medical Marijuana
5 Act.

6 Marijuana, tetrahydrocannabinols or chemical derivatives
7 of tetrahydrocannabinol shall be considered Schedule II
8 controlled substances only for the purposes enumerated in the
9 [~~Controlled Substances Therapeutic Research Act~~] Compassionate
10 Use Medical Marijuana Act;

11 (2) any of the following opiates, including
12 their isomers, esters, ethers, salts and salts of isomers,
13 whenever the existence of these isomers, esters, ethers and
14 salts is possible within the specific chemical designation:

- 15 (a) alphaprodine;
- 16 (b) anileridine;
- 17 (c) bezitramide;
- 18 (d) dihydrocodeine;
- 19 (e) diphenoxylate;
- 20 (f) fentanyl;
- 21 (g) hydromorphone;
- 22 (h) isomethadone;
- 23 (i) levomethorphan;
- 24 (j) levorphanol;
- 25 (k) meperidine;

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- 1 (l) metazocine;
- 2 (m) methadone;
- 3 (n) methadone- - intermediate, 4-cyano-2-
- 4 di methyl amino-4, 4-di phenyl butane;
- 5 (o) moramide- - intermediate, 2-methyl-3-
- 6 morpholino-1, 1-di phenyl-propane-carboxylic acid;
- 7 (p) oxycodone;
- 8 (q) pethidine;
- 9 (r) pethidine- - intermediate- - A, 4-cyano-
- 10 1-methyl-4-phenyl piperidine;
- 11 (s) pethidine- - intermediate- - B, ethyl-4-
- 12 phenyl-piperidine-4-carboxylate;
- 13 (t) pethidine- - intermediate- - C, 1-
- 14 methyl-4-phenyl piperidine-4-carboxylic acid;
- 15 (u) phenazocine;
- 16 (v) piminodine;
- 17 (w) racemorphan; and
- 18 (x) racemorphan; and

19 (3) unless listed in another schedule, any
20 material, compound, mixture or preparation which contains any
21 quantity of the following substances having a potential for
22 abuse associated with a stimulant effect on the central nervous
23 system:

- 24 (a) amphetamine, its salts, optical
25 isomers and salts of its optical isomers;

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- 1 (b) phenmetrazine and its salts;
- 2 (c) methamphetamine, its salts, isomers
- 3 and salts of isomers; and
- 4 (d) methylphenidate.

5 B. Where methadone is prescribed, administered or
6 dispensed by a practitioner of a drug abuse rehabilitation
7 program as defined [~~in Paragraph (3) of Subsection A of Section~~
8 ~~26-2-13 NMSA 1978~~] by the department of health while acting in
9 the course of his professional practice, or otherwise lawfully
10 obtained or possessed by a person, such person shall not
11 possess such methadone beyond the date stamped or typed on the
12 label of the container of the methadone, nor shall any person
13 possess methadone except in the container in which it was
14 originally administered or dispensed to such person, and such
15 container [~~must~~] shall include a label showing the name of the
16 prescribing physician or practitioner, the identity of
17 methadone, the name of the ultimate user, the date when the
18 methadone is to be administered to or used or consumed by the
19 named ultimate user shown on the label and a warning on the
20 label of the methadone container that the ultimate user ~~must~~
21 use, consume or administer to himself the methadone in such
22 container. Any person who violates this subsection is guilty
23 of a felony and shall be punished by imprisonment for not less
24 than one year nor more than five years, or by a fine of up to
25 five thousand dollars (\$5,000), or both. "

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